

**H.R. 219, AS REPORTED BY THE
SUBCOMMITTEE ON HOUSING AND
COMMUNITY OPPORTUNITY
ON
FEBRUARY 4, 1998**

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Homeowners’ Insur-
3 ance Availability Act of 1997”.

4 **SEC. 2. CONGRESSIONAL FINDINGS.**

5 The Congress finds that—

6 (1) the rising costs resulting from natural dis-
7 asters have placed a strain on homeowners’ insur-
8 ance markets in many areas, jeopardizing the ability
9 of many consumers to adequately insure their homes
10 and possessions;

11 (2) the lack of sufficient insurance capacity
12 threatens to increase the number of uninsured home-
13 owners, which, in turn, increases the risk of mort-
14 gage defaults and the strain on the Federal banking
15 system;

16 (3) some States have intervened to ensure the
17 continued availability of homeowners’ insurance for
18 all residents;

1 (4) it is appropriate that efforts to improve in-
2 surance availability be designed and implemented at
3 the State level;

4 (5) while State insurance programs may be ade-
5 quate to cover losses from most natural disasters, a
6 small percentage of events are likely to exceed the fi-
7 nancial capacity of these programs and the local in-
8 surance market;

9 (6) Federal reinsurance for State disaster in-
10 surance programs will improve the effectiveness of
11 such State initiatives and increase the likelihood that
12 homeowners' insurance claims will be fully paid in
13 the event of a large natural catastrophe; and

14 (7) any Federal reinsurance program must be
15 founded upon sound actuarial principles and priced
16 in a manner that minimizes the potential impact on
17 the Treasury.

18 **SEC. 3. PROGRAM AUTHORITY.**

19 (a) IN GENERAL.—The Secretary of the Treasury
20 shall carry out a program under this Act to make reinsur-
21 ance coverage available for purchase by eligible State pro-
22 grams under section 4. The reinsurance coverage shall be
23 designed to improve the availability of homeowners' insur-
24 ance for the purpose of facilitating the pooling, and
25 spreading the risk, of catastrophic financial losses from

1 natural disasters and to improve the solvency of home-
2 owners' insurance markets.

3 (b) CONTRACTS.—Under the program under this Act,
4 the Secretary shall offer reinsurance coverage through
5 contracts with covered purchasers, which contracts—

6 (1) shall provide coverage based solely on in-
7 sured losses within the State of the eligible State
8 program purchasing the contract;

9 (2) shall not interfere in private markets; and

10 (3) shall minimize the administrative costs of
11 the Federal Government.

12 **SEC. 4. ELIGIBLE STATE PROGRAMS.**

13 Only the following State-operated programs shall be
14 eligible to purchase a contract for reinsurance coverage
15 made available under this Act:

16 (1) STATE INSURANCE AND REINSURANCE PRO-
17 GRAMS.—Any State-operated program that complies
18 with the following requirements:

19 (A) PROGRAM DESIGN.—The program
20 shall be—

21 (i) an insurance program that offers
22 coverage for homes (including dwellings
23 owned under condominium and cooperative
24 ownership arrangements) and the contents
25 of apartments to State residents because of

1 the finding of the State insurance commis-
2 sioner that such a program is necessary in
3 order to provide for the continued avail-
4 ability of such residential coverage for all
5 residents; or

6 (ii) a reinsurance program that is de-
7 signed to improve private insurance mar-
8 kets which offer coverage for homes (in-
9 cluding dwellings owned under condomin-
10 ium and cooperative ownership arrange-
11 ments) and the contents of apartments be-
12 cause of the finding of the State insurance
13 commissioner that such a program is nec-
14 essary in order to provide for the contin-
15 ued availability of such residential coverage
16 for all residents.

17 (B) TAX STATUS.—The program shall be
18 structured and carried out in a manner so that
19 the program is exempt from all Federal tax-
20 ation.

21 (C) COVERAGE.—The program shall cover
22 only a single peril.

23 (D) EARNINGS.—The program may not
24 provide the inuring of any part of any net earn-

1 ings of the program to the benefit of any in-
2 surer that participates in the program;

3 (E) MITIGATION.—The program shall in-
4 clude mitigation provisions that require that not
5 less than 10 percent of the net investment in-
6 come of the State insurance or reinsurance pro-
7 gram be used for programs to mitigate losses
8 from natural disasters for which the State in-
9 surance or reinsurance program was estab-
10 lished; except that in the case of any State for
11 which the Secretary has determined, pursuant
12 to a request by the State insurance commis-
13 sioner, that the 10 percent requirement under
14 this subparagraph will jeopardize the actuarial
15 soundness of the State program, this subpara-
16 graph shall be applied by substituting “5 per-
17 cent” for “10 percent”.

18 (F) NEW PROGRAMS.—For any program
19 which, after January 1, 1998, commences offer-
20 ing insurance or reinsurance coverage described
21 in clause (i) or (ii), respectively, of subpara-
22 graph (A), the program—

23 (i) may not involve cross-subsidization
24 between any separate property and cas-
25 ualty lines covered under the program;

1 (ii) shall include provisions that au-
2 thorize the State insurance commissioner
3 to terminate the program if the insurance
4 commissioner determines that the program
5 is no longer necessary to ensure the avail-
6 ability of homeowners' insurance for all
7 State residents; and

8 (iii) shall provide that, for any insur-
9 ance coverage for homes (including dwell-
10 ings owned under condominium and coop-
11 erative ownership arrangements) and the
12 contents of apartments that is made avail-
13 able under the State insurance program
14 and for any reinsurance coverage for such
15 insurance coverage made available under
16 the State reinsurance program, the pre-
17 mium rates charged shall be amounts that,
18 at a minimum, are sufficient to cover the
19 full actuarial costs of such coverage, based
20 on consideration of the risks involved and
21 accepted actuarial and rate making prin-
22 ciples, anticipated administrative expenses,
23 loss and loss-adjustment expenses, and
24 adequate reserves.

1 (2) STATE AUCTION PROGRAMS.—Any State-op-
2 erated auction program that complies with the fol-
3 lowing requirements:

4 (A) PROGRAM DESIGN.—The program
5 shall provide for auctioning all such reinsurance
6 coverage purchased to covered purchasers, who
7 may be only private insurers or reinsurers oper-
8 ating in the State.

9 (B) TAX STATUS.—The program shall be
10 structured and carried out in a manner so that
11 the program is exempt from all Federal tax-
12 ation.

13 (C) COVERAGE.—The program shall cover
14 only a single peril.

15 (D) EARNINGS.—The program may not
16 provide the inuring of any part of any net earn-
17 ings of the program to the benefit of any in-
18 surer that participates in the program;

19 (E) MITIGATION.—The program shall pro-
20 vide that, of any revenues to the program de-
21 rived from auctioning the reinsurance coverage
22 made available under this Act that exceed the
23 amount paid by the State program for such
24 coverage—

1 (i) 90 percent shall be covered into
2 Disaster Reinsurance Fund established
3 under section 9; and

4 (ii) 10 percent shall be used by the
5 State for programs to mitigate losses from
6 natural disasters for which the State pro-
7 gram was established;

8 except that in the case of any State for which
9 the Secretary has determined, pursuant to a re-
10 quest by the State insurance commissioner, that
11 the requirements under this subparagraph will
12 otherwise jeopardize the actuarial soundness of
13 the State program, this subparagraph shall be
14 applied by substituting “95 percent” for “90
15 percent” in clause (i) and “5 percent” for “10
16 percent” in clause (ii).

17 (F) NEW PROGRAMS.—If, under the pro-
18 gram auctions of reinsurance coverage com-
19 mence after January 1, 1998, the program
20 shall—

21 (i) comply with the same requirement
22 applicable under paragraph (1)(F)(ii) to
23 new insurance and reinsurance programs;
24 and

1 (ii) provide that, for any (I) insurance
2 coverage for homes (including dwellings
3 owned under condominium and cooperative
4 ownership arrangements) and the contents
5 of apartments, and (II) reinsurance cov-
6 erage, that is covered by reinsurance cov-
7 erage purchased through the State pro-
8 gram, the premium rates charged shall be
9 amounts that, at a minimum, are sufficient
10 to cover the full actuarial costs of such
11 coverage, based on consideration of the
12 risks involved and accepted actuarial and
13 rate making principles, anticipated admin-
14 istrative expenses, loss and loss-adjustment
15 expenses, and adequate reserves.

16 **SEC. 5. QUALIFIED LINES OF COVERAGE.**

17 A contract for reinsurance coverage made available
18 under this Act shall provide insurance coverage against
19 residential property losses to homes (including dwellings
20 owned under condominium and cooperative ownership ar-
21 rangements) and the contents of apartment buildings.

22 **SEC. 6. COVERED PERILS.**

23 A contract for reinsurance coverage made available
24 under this Act shall cover losses that are proximately
25 caused by—

- 1 (1) earthquakes;
 - 2 (2) perils ensuing from earthquakes, including
 - 3 fire and tsunami; and
 - 4 (3) tropical cyclones having maximum sustained
 - 5 winds of at least 74 miles per hour, including hurri-
 - 6 canes and typhoons.
- 7 The Secretary shall, by regulation, define such natural dis-
- 8 aster perils.

9 **SEC. 7. TERMS OF REINSURANCE CONTRACTS.**

10 A contract for reinsurance coverage made available

11 under this Act shall include the following terms and condi-

12 tions:

13 (1) MATURITY.—The term of the contract shall

14 not exceed 1 year.

15 (2) PAYMENT CONDITION.—The contract shall

16 authorize claims payments for eligible losses only to

17 covered purchasers.

18 (3) RETAINED LOSSES REQUIREMENT.—The

19 contract shall pay eligible losses only if the total

20 amount of insurance claims for losses from covered

21 perils to properties, which are located within the

22 State covered by the contract and covered by quali-

23 fied lines, exceeds the amount of retained losses pro-

24 vided under the contract (pursuant to section 8(a))

25 purchased by the eligible State program.

1 (4) CALCULATING ELIGIBLE LOSSES.—Eligible
2 losses under the contract shall include only insur-
3 ance claims for property covered by qualified lines
4 that are paid within the 3-year period beginning
5 upon the event for which payment under the con-
6 tract is made.

7 (5) PRICING.—The cost of reinsurance coverage
8 under the contract shall be established by the Sec-
9 retary based upon the recommendations of the Na-
10 tional Commission on Catastrophe Risks and Insur-
11 ance Loss Costs established under section 10 and
12 shall consist of the following components:

13 (A) RISK-BASED PRICE.—A risk-based
14 price, which shall reflect the anticipated payout
15 of the contract according to the actuarial analy-
16 sis and recommendations of the Commission.

17 (B) RISK LOAD.—A risk load, determined
18 by the Secretary, of an amount that is not less
19 than the risk-based price under subparagraph
20 (A).

21 (C) ADMINISTRATIVE COSTS.—A sum suf-
22 ficient to provide for the operation of the Com-
23 mission and the administrative expenses in-
24 curred by the Secretary in carrying out this
25 Act.

1 The rates for reinsurance coverage shall produce ex-
2 pected premiums which shall be sufficient to pay for
3 all claims, loss adjustment expense, and all adminis-
4 trative costs due to the reinsurance coverage for the
5 Fund under section 9.

6 (6) REPAYMENT TERMS.—The contract shall
7 include a condition that requires that, in the event
8 that a covered purchaser receives payments for
9 qualifying claims that consist of amounts derived
10 from obligations issued under section 9(d), each eli-
11 gible State program that has purchased coverage
12 which is in force at such time shall continue to pur-
13 chase the reinsurance coverage provided under this
14 Act, at levels which are at least as great as the level
15 immediately before the Fund was credited with
16 amounts borrowed under section 9(d), until such
17 borrowed monies, including interest, are repaid pur-
18 suant to section 9(d)(3)(C).

19 (7) INFORMATION.—The contract shall contain
20 a condition providing that the National Commission
21 on Catastrophe Risks and Insurance Loss Costs may
22 require the State program to submit to the Commis-
23 sion all information on the State program relevant
24 to the duties of the Commission, as determined by
25 the Secretary.

1 (8) OTHERS.—The contract shall contain such
2 other terms as the Secretary considers necessary to
3 ensure the long-term financial integrity of the pro-
4 gram under this Act.

5 **SEC. 8. LEVEL OF RETAINED LOSSES AND MAXIMUM FED-**
6 **ERAL LIABILITY.**

7 (a) AVAILABLE LEVELS OF RETAINED LOSSES.—In
8 making reinsurance coverage available under this Act, the
9 Secretary shall make available for purchase contracts for
10 reinsurance coverage that require the sustainment of re-
11 tained losses (as required under section 7(3) for payment
12 of eligible losses) in various amounts, as the Secretary de-
13 termines appropriate and subject to the requirements
14 under subsection (b).

15 (b) MINIMUM LEVEL OF RETAINED LOSSES.—

16 (1) IN GENERAL.—Subject to paragraph (2)
17 and notwithstanding any other provision of this Act,
18 a contract for reinsurance coverage under this Act
19 may not be made available or sold to an eligible
20 State program unless the contract requires retained
21 losses in the following amount:

22 (A) EXISTING STATE COVERAGE PRO-
23 GRAMS.—For any eligible State program under
24 section 4(1) which, upon January 1, 1998, is
25 offering insurance or reinsurance coverage de-

1 scribed in clause (i) or (ii), respectively, of sub-
2 paragraph (A) of such section, the State pro-
3 gram shall sustain an amount of retained losses
4 of not less than the greater of—

5 (i) \$2,000,000,000; or

6 (ii) the current claims paying capac-
7 ity, as of the date of the enactment of this
8 Act, of the eligible State program, as de-
9 termined by the Secretary.

10 (B) NEW STATE COVERAGE PROGRAMS.—

11 For any eligible State program under section
12 4(1) which, after January 1, 1998, commences
13 offering insurance or reinsurance coverage de-
14 scribed in clause (i) or (ii), respectively, of sub-
15 paragraph (A) of such section, the State pro-
16 gram shall sustain an amount of retained losses
17 of not less than the greater of—

18 (i) \$2,000,000,000;

19 (ii) the current claims paying capac-
20 ity, as of the date of the commencement of
21 the program under this Act, of the eligible
22 State program, as determined by the Sec-
23 retary; or

24 (iii) an amount, determined by the
25 Secretary in consultation with the National

1 Commission on Catastrophe Risks and In-
2 surance Loss Costs established under sec-
3 tion 10, which is sufficient to cover eligible
4 losses in the State for all events having a
5 likelihood of occurrence in any 12-month
6 period that is greater than one percent.

7 (C) NEW STATE AUCTION PROGRAMS.—
8 For any eligible State program under section
9 4(2) which, after January 1, 1998, commences
10 auctions of reinsurance coverage purchased
11 under this Act, the insurance industry in that
12 State shall sustain a cumulative amount of re-
13 tained losses (in covered lines resulting from
14 covered perils) of not less than the greater of—

15 (i) \$2,000,000,000 ; or

16 (ii) an amount, determined by the
17 Secretary in consultation with the National
18 Commission on Catastrophe Risks and In-
19 surance Loss Costs established under sec-
20 tion 10, which is sufficient to cover eligible
21 losses in the State for all events having a
22 likelihood of occurrence in any 12-month
23 period that is greater than one percent.

24 (2) ANNUAL ADJUSTMENT.—The Secretary
25 may annually raise the minimum level of retained

1 losses for an eligible State program to reflect, as de-
2 termined by the Secretary—

3 (A) the growth in claims paying capacity
4 of the eligible State program; or

5 (B) the growth of capacity in the private
6 insurance and reinsurance market.

7 (3) CLAIMS PAYING CAPACITY.—For purposes
8 of this subsection, the claims paying capacity of a
9 State-operated insurance or reinsurance program
10 under section 4(1) shall be determined taking into
11 consideration retained losses to private insurers in
12 the State in an amount assigned by the State insur-
13 ance commissioner, the cash surplus of the program,
14 and the lines of credit, reinsurance, and other fi-
15 nancing mechanisms of the program established by
16 law.

17 (c) MAXIMUM FEDERAL LIABILITY.—

18 (1) IN GENERAL.—Except as provided in para-
19 graph (2) and notwithstanding any other provision
20 of law, the maximum amount paid for all events in
21 any single year by the Secretary pursuant to claims
22 under all contracts for reinsurance under this Act
23 shall not exceed \$25,000,000,000. If, in any single
24 year, claims under existing contracts for reinsurance
25 exceed \$25,000,000,000 or the amount determined

1 pursuant to paragraph (2) (as applicable), each
2 claimant shall receive a prorated portion of the
3 amount available for payment of claims.

4 (2) **TRANSITION LIMITATION.**—During the 4-
5 year period beginning on the date that contracts for
6 reinsurance coverage under this Act are first made
7 available for purchase, the Secretary shall establish
8 and annually revise a dollar amount which shall be
9 the maximum amount that may be paid for all
10 events in any single year during such period pursu-
11 ant to claims under all contracts for reinsurance
12 under this Act. Such dollar amount limitation may
13 not in any event exceed \$25,000,000,000. If, in any
14 single year during such period, claims under existing
15 contracts for reinsurance exceed the dollar amount
16 limitation established for such year pursuant to this
17 paragraph, each claimant shall receive a prorated
18 portion of the amount available for payment of
19 claims.

20 **SEC. 9. DISASTER REINSURANCE FUND.**

21 (a) **ESTABLISHMENT.**—There is established within
22 the Treasury of the United States a fund to be known
23 as the Disaster Reinsurance Fund (in this section referred
24 to as the “Fund”).

25 (b) **CREDITS.**—The Fund shall be credited with—

1 (1) amounts received annually from the sale of
2 contracts for reinsurance coverage under this Act;

3 (2) any amounts borrowed under subsection
4 (d);

5 (3) any amounts earned on investments of the
6 Fund pursuant to subsection (e); and

7 (4) such other amounts as may be credited to
8 the Fund.

9 (c) USES.—Amounts in the Fund may be used only
10 to the extent approved in appropriation Acts and only for
11 the following purposes:

12 (1) CONTRACT PAYMENTS.—For payments to
13 covered purchasers under contracts for reinsurance
14 coverage for eligible losses under such contracts.

15 (2) COMMISSION COSTS.—To pay for the oper-
16 ating costs of the National Commission on Catas-
17 trophe Risks and Insurance Loss Costs established
18 under section 10.

19 (3) ADMINISTRATIVE EXPENSES.—To pay for
20 the administrative expenses incurred by the Sec-
21 retary in carrying out the reinsurance program
22 under this Act.

23 (d) BORROWING.—

24 (1) AUTHORITY.—To the extent that the
25 amounts in the Fund are insufficient to pay claims

1 and expenses under subsection (c), the Secretary
2 may issue such notes and other obligations as may
3 be necessary to cover the insufficiency.

4 (2) INTEREST RATES.—Any such obligations
5 shall bear interest at a rate determined by the Sec-
6 retary, taking into consideration the current market
7 yields on outstanding marketable obligations of the
8 United States of comparable maturities.

9 (3) CONDITIONS.—The following conditions
10 shall apply to any obligations issued under this sub-
11 section:

12 (A) The total amount of outstanding obli-
13 gations at any given time shall not exceed the
14 capacity of the Fund to repay such obligations
15 within 20 years.

16 (B) The Secretary may issue such obliga-
17 tions only to such extent and in such amounts
18 as are provided in appropriation Acts.

19 (C) Any obligations issued under this sub-
20 section shall be repaid, including interest, from
21 the Fund and shall be recouped from premiums
22 charged for reinsurance coverage provided
23 under this Act.

24 (e) INVESTMENT.—If the Secretary determines that
25 the amounts in the Fund are in excess of current needs,

1 the Secretary may invest such amounts as the Secretary
2 considers advisable in obligations issued or guaranteed by
3 the United States.

4 (f) PROHIBITION OF FEDERAL FUNDS.—Except for
5 amounts made available pursuant to subsection (d) and
6 section 10(g), no Federal funds shall be authorized or ap-
7 propriated for the Fund or for carrying out the reinsur-
8 ance program under this Act.

9 **SEC. 10. NATIONAL COMMISSION ON CATASTROPHE RISKS**
10 **AND INSURANCE LOSS COSTS.**

11 (a) ESTABLISHMENT.—The Secretary shall establish
12 a commission to be known as the National Commission
13 on Catastrophe Risks and Insurance Loss Costs (in this
14 section referred to as the “Commission”).

15 (b) DUTIES.—The Commission shall meet for the sole
16 purpose of advising the Secretary regarding the estimated
17 loss costs associated with the contracts for reinsurance
18 available under this Act.

19 (c) MEMBERS.—The Commission shall consist of not
20 more than 15 members, who shall be appointed by and
21 at the discretion of the Secretary, except that the members
22 shall at all times include at least 4 professional actuaries,
23 2 representatives of State insurance departments, 2 ex-
24 perts in the field of disaster modeling, a structural engi-
25 neer, a meteorologist, and a seismologist.

1 (d) EXPERTISE.—Each member appointed to the
2 Commission shall be recognized as qualified in a field re-
3 lated to natural disaster risk assessment or insurance.

4 (e) TREATMENT OF NON-FEDERAL MEMBERS.—
5 Each member of the Commission who is not otherwise em-
6 ployed by the Federal Government shall be considered a
7 special Government employee for purposes of section 202
8 of title 18, United States Code.

9 (f) COMPENSATION.—Each member of the Commis-
10 sion who is not an officer or employee of the Federal Gov-
11 ernment shall be compensated at a rate of basic pay pay-
12 able for level V of the Executive Schedule, for each day
13 (including travel time) during which such member is en-
14 gaged in the performance of the duties of the Commission.
15 All members of the Commission who are officers or em-
16 ployees of the United States shall serve without compensa-
17 tion in addition to that received for their services as offi-
18 cers or employees of the United States.

19 (g) FUNDING.—

20 (1) AUTHORIZATION OF APPROPRIATIONS.—

21 There are authorized to be appropriated—

22 (A) \$1,000,000 for fiscal year 1998 for the
23 initial expenses in establishing the Commission
24 and the initial activities of the Commission, as

1 determined by the Secretary of the Treasury;
2 and

3 (B) such additional sums as may be nec-
4 essary to carry out subsequent activities of the
5 Commission.

6 (2) OFFSET.—The Secretary shall provide, to
7 the maximum extent practicable, that an amount
8 equal to any amount appropriated under paragraph
9 (1) is obtained from purchasers of reinsurance cov-
10 erage under this Act and deposited in the Fund es-
11 tablished under section 9. Such amounts shall be ob-
12 tained by inclusion of a provision for the Commis-
13 sion's expenses incorporated into the pricing of the
14 contracts for such reinsurance coverage, pursuant to
15 section 7(5)(C).

16 **SEC. 11. REPORT ON SECONDARY MARKET MECHANISM**
17 **FOR REINSURANCE CONTRACTS.**

18 Not later than the expiration of the 18-month period
19 beginning on the date of the enactment of this Act, the
20 Secretary shall submit to the Congress a report that—

21 (1) analyzes the extent of the market for resale
22 of reinsurance contracts under this Act by the Sec-
23 retary in the capital markets;

1 (2) proposes a program or system for making
2 not less than 20 percent of the total written dollar
3 value of such contracts available for purchase; and

4 (3) contains recommendations for any statutory
5 changes necessary to operate such a program or sys-
6 tem.

7 **SEC. 12. DEFINITIONS.**

8 For purposes of this Act, the following definitions
9 shall apply:

10 (1) COVERED PERILS.—The term “covered per-
11 ils” means the natural disaster perils under section
12 6.

13 (2) COVERED PURCHASER.—The term “covered
14 purchaser” means—

15 (A) with respect to reinsurance coverage
16 made available under this Act that is purchased
17 by an eligible State program under section 4(1),
18 the State-operated insurance or reinsurance
19 program that purchases such coverage; and

20 (B) with respect to reinsurance coverage
21 made available under this Act that is purchased
22 by a State auction program under section 4(2),
23 the entity that purchases such coverage from
24 the eligible State program pursuant to an auc-
25 tion.

1 (3) ELIGIBLE STATE PROGRAM.—The term “eli-
2 gible State program” means a State program that,
3 pursuant to section 4, is eligible to purchase reinsur-
4 ance coverage made available under this Act.

5 (4) QUALIFIED LINES.—The term “qualified
6 lines” means lines of insurance coverage for which
7 losses are covered under section 5 by reinsurance
8 coverage under this Act.

9 (5) SECRETARY.—The term “Secretary” means
10 the Secretary of the Treasury.

11 (6) STATE.—The term “State” means the
12 States of the United States, the District of Colum-
13 bia, the Commonwealth of Puerto Rico, the Com-
14 monwealth of the Northern Mariana Islands, Guam,
15 the Virgin Islands, American Samoa, and any other
16 territory or possession of the United States.